BRIEF SUPPORTING PETITION FOR WRIT

Robert W. Halliday, sole heir-at-law of Janet M. Halliday, deceased, submits the following brief to support his Petition for a Writ filed herewith in the above entitled case.

The pending case was originally commenced by the petitioner in the Court of Appeals, 8th Judicial District of Ohio, by filing a petition to vacate an order of said Court of Appeals confirming the sale of real property by the Sheriff of Cuyahoga County, Ohio, to The Union Properties, Inc., the plaintiff in foreclosure case No. 16655, on the grounds that there was irregularity in the obtaining of said order in that the appraisers were not disinterested and were not freeholders of Cuyahoga County, and that said purported appraisers did not return an estimate of the real value of the property in money but did return an estimate of value of said property far below its real value in money, and that there was not an appraisement of the property as required by the Laws of the State of Ohio. Specifically Section 11672 of the General Code of Ohio provides:

> "11672. Lands to be appraised.—When execution is levied upon lands and tenements, the officer who makes the levy shall call an inquest of three disinterested freeholders, residents of the county where the lands taken in execution are situated, and administer to them an oath impartially to appraise the property so levied upon, upon actual view. They forthwith shall return to such officer, under their hands, an estimate of the real value of the property in money."

Defendant's Exhibit 1 (R) is a photostatic copy of the return of the appraisers in said case No. 16655.

The testimony of T. L. Terrell (R-) one of the appraisers shows that he was not a disinterested freeholder.

The testimony of C. E. Gould (R-) shows that he was not a freeholder of Cuyahoga County.

The testimony of V. M. DeMelto (R-) shows that he had substantial pecuniary interests with the Liquidator of Ohio State Banks, the predecessor of The Union Properties, Inc.

The testimony of Mark Swisher (R-) shows that the return of the appraisers was not an estimate of the real value of the property in money.

The testimony of Peter V. Shepherd (R-) shows that the return of the appraisers was not an estimate of the real value of the property in money.

The testimony of both Hugh K. Dawson (R-) and R. W. Davis (R-) shows that The Union Properties, Inc., and the insurance companies after an inspection by the engineers of the insurance companies agreed on a valuation of the super-structure of $44,444.00 and accordingly entered into 90% co-insurance contracts for fire insurance in the amount of $40,000.00 on the superstructure alone promptly after the Sheriff conveyed the said described premises.

The testimony of Lewis F. Chapman (R-) shows that the superstructure of said described premises was totally destroyed by fire on June 23, 1941.

Said Petitioner also filed in said Court of Appeals in the pending case a Supplemental Petition to vacate the decree of foreclosure and the order to appraise, advertise and sell the premises, rendered on the 17th day of March, 1938, on the ground that one of the Judges of said Court of Appeals had substantial pecuniary interest in and economic arrangements with The Union Properties, Inc., and its predecessor and at the hearing of said case before the said Court of Appeals on March 2, 1942, it was disclosed that two of the Judges of said Court of Appeals had substantial pecuniary interests in The Union Properties, Inc. To substantiate the above, reference is made to the court reporter's notes taken in Court of Appeals, at the hearing of the pending cause on said March 2, 1942, to-wit:

Mr. Bravo: So much for the appraisers—except that I want to comment upon Thos. Terrell. He is a brother of former Judge Terrell, who sat on this bench.

He stated in his deposition that he did not know whether any members of his family were financially interested in The Union Trust Co. or its successors. Well, the records of that bank, I think, will disclose that the sisters of Judge and Thos. Terrell are holders of creditor's notes against the Union Properties, Inc., in some Three Thousand Dollars or better and Judge Terrell heavily interested.

Judge Lieghley: So you have not overlooked anything—

Mr. Bravo: Well, we want time to take their depositions.

Judge Lieghley: I am a depositor in that bank; so I do not want you to overlook that.

Mr. Bravo: Well, your Honor, I think that revelation comes at a rather late time.

Judge Lieghley: If that is disqualification, neither of the banks could probably get a case tried in Cuyahoga County.

Mr. Bravo: Well, they can always bring a Judge from outside the county unless your Honor revealed his interest by reason of the deposit, and there was an agreement that your Honor sit in this matter.

Judge Lieghley: Just simply a depositor. When they closed the bank I did get my money, a few cents.

Mr. Bravo: Your Honor, for the record I desire to show that Robert W. Halliday objects to your Honor sitting in this case, by reason of the fact that you have just disclosed that you were a depositor in the Union Trust Company an as a holder of creditor's notes in Union Properties, Inc.

Judge Lieghley: Let the record so show. I think I have something around $400 coming yet. Show that, too.

Mr. Bravo: Subject to same objection.

If a Judge has pecuniary interests in the result of the judgment which he renders, such judgment is invalid.

In the case of *Gregory vs. C. C. C. R. R. Co.,* 4 O. S. 675, it was held:

> "Where two judges of the Court of Common Pleas are interested in the event of a proceeding to appropriate land to the use of a railroad and that fact appears of record, and there is no evidence that the land-holder waived his objections to the court, the order of the court, appointing appraisers and directing a warrant, will be revised."

Here Judges were stockholders of the railroad. The appraisers appointed by the court set the value of the land taken and benefited thereby.

In the case of *Tumey vs. State of Ohio,* 273 U. S. Rep. 510-11, the United States Supreme Court held that the interest of a mayor in the result of his decision resulted in an invalid judgment.

In the Tari case, 117 O. S. at page 486, Chief Justice Marshall says:

> "While a State can fix, determine and define the jurisdiction of its courts, it is still open to the United States Supreme Court to determine whether a jurisdiction so exercised operates as a denial of due process of law."

Violation of the due process clause of Amendment XIV of the Constitution of the United States was alleged in the petition originally filed in said Court of Appeals by the petitioner.

Section 6 of Art. IV of the Ohio State Constitution provides that the judgments of the Court of Appeals of the State of Ohio shall be final in all cases, except cases involving questions arising under the Constitution of the United States or of the State of Ohio, and except in cases of which a *Court of Appeals* of Ohio has *Original Jurisdiction.*

In the pending case the petition to vacate the prior action of the Court of Appeals was filed in the Court of Appeals. Original Jurisdiction was assumed by said Court of Appeals. No contention against such *Original Jurisdiction* has been made.

The proir Action of the said Court of Appeals which the Petitioner seeks to vacate consist of

1. A decree in foreclosure and orders to appraise, advertise and sell the described premises rendered on March 17, 1938 by said Court of Appeals;

2. The sale of said described premises by the sheriff of Cuyahoga County pursuant to said orders of March 17, 1938;

3. The order of confirmation of sale by said Court of Appeals issued JANUARY 10TH, 1939.

The Supreme Court of Ohio ignored the provisions of Art. IV, Section 6 of the Ohio State Constitution, and denied to your Petitioner the right to a hearing on the merits of the case and affirmed the judgment of said Court of Appeals without a hearing on merit in violation of said Art. IV, Section 6 of the Ohio State Constitution, and in violation of Amendment XIV, Section 1, of the United States Constitution.

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STATE OF OHIO,
CUYAHOGA COUNTY, } ss:

ROBERT W. HALLIDAY, being first duly sworn, says: I am the foregoing Petitioner, and that the foregoing Petition is true to my own knowledge.

SWORN to before me this ..... day of August, 1941.

Notary Public.

No. 438

FILED
OCT 2 1942
CHARLES ELMORE CROPLEY
CLERK

In The Supreme Court of the United States

APPEAL FROM THE SUPREM COURT OF OHIO

No. 29,146

AND

FROM THE COURT OF APPEALS, EIGHTH JUDICIAL DISTRICT OF OHIO.

No. 16,656

STATE OF OHIO, ex rel S. H. SQUIRE, SUPT. OF BANKS IN CHARGE OF LIQUIDATION OF THE UNION TRUST COMPANY, SUB. PLFF. UNION PROPERTIES, INC.,

Plaintiffs,

vs.

ROBERT W. HALLIDAY, ET AL.,

Defendants.

PETITION AND BRIEF FOR WRIT OF CERTIORARI IN THE SUPREME COURT OF OHIO AND TO THE COURT OF APPEALS, EIGHTH JUDICIAL DISTRICT OF OHIO.

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SUPREME COURT OF THE UNITED STATES

TERM, 1942

No. ——

STATE OF OHIO, ex rel S. H. SQUIRE, SUPT. OF BANKS IN CHARGE OF LIQUIDATION OF THE UNION TRUST COMPANY, SUB. PLFF. UNION PROPERTIES, INC.,

Plaintiffs,

vs.

ROBERT W. HALLIDAY, ET AL.,

Defendants.

PETITION AND BRIEF FOR WRIT OF CERTIORARI IN THE SUPREME COURT OF OHIO AND TO THE COURT OF APPEALS, EIGHTH JUDICIAL DISTRICT OF OHIO.

To the Honorable Justices of The Supreme Court of The United States:

Now comes Robert W. Halliday, resident of Cleveland, Ohio, Petitioner herein, and says:

On the 17th day of March, 1938, The Court of Appeals, 8th Judicial District of Ohio entered a decree in foreclosure of a mortgage upon the following described premises:

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being Sub Lots Nos. 11, 12, 13, and 14 in the Olive A. Meech Subdivision of part of Original One Hundred Acre Lot No. 457, as shown by the recorded plat of said Subdivision in Volume 4 of Maps, Page 24 of Cuyahoga County Records.

Said Sub Lots Nos. 11, 12, 13 and 14 together form a parcel of land having a frontage of 264 feet on the southerly side of Richmond Avenue, S. E. (20 feet wide), and extending back 111.375 feet on the Easterly line, 140.25 feet on the Westerly line, and having a real line of 264 feet, as appears by said plat, be the same more or less, but subject to all legal highways.

In case No. 16656 on the 27th day of May, 1938, the Sheriff of Cuyahoga County sold said premises to The Union Properties, Inc., at two-thirds of the appraisal and on the 10th day of JANUARY 1939, said Court of Appeals confirmed the sale of said premises by the Sheriff of Cuyahoga County to The Union Properties, Inc., which corporation had been substituted in said foreclosure proceedings as the plaintiff, prior to the time of said Sheriff's sale.

On the 23rd day of December, 1938, and prior to the date of confirmation of said sale, your petitioner filed objections in the Court of Appeals opposing confirmation of said sale on the ground that the Sheriff's appraisal was too low and upon no other ground.

Thereafter your petitioner discovered that some of said appraisers were not freeholders of Cuyahoga County, Ohio, and had not actually viewed the premises to be appraised and that some of said appraisers were not disinterested parties but had pecuniary interests in The Union Properties, Inc., and also discovered that one of the Judges of the said Court of Appeals had at the time of Judgment and confirmation of sale substantial pecuniary interests in and economic arrangements with The Union Properties, Inc., and its predecessors in title.

Promptly after becoming aware of the aforesaid circumstances your Petitioner filed a petition in said Court of Appeals in said case No. 16656 to set aside said Sheriff's Sale and said confirmation of said sale for the reason that said appraisal and said sale were void and subsequently filed a supplementary petition to set the decree of foreclosure aside on the ground that one of the Judges of said Court of Appeals had, at the time said decree was entered, substantial pecuniary interests in and economic arrangements with said The Union Properties, Inc., and its predecessors in title.

On the day of December, 1941, said Court

of Appeals issued an order to take depositions of sundry witnesses.

That said depositions were subsequently duly taken and that on the 2nd day of March, 1942, said cause came on for hearing before said Court of Appeals and said depositions were presented and delivered to said Court, the pertinent part of which appears in Defendant's Exhibit Z and attached to the within petition and made a part hereof.

On said 2nd day of March, 1942, in said Court of Appeals at the hearing of said pending cause one John Crowl, a qualified court reporter, took shorthand notes of said proceedings. A pertinent part of said proceedings, as appears from transcription of said shorthand notes, discloses that two of the Judges of said Court of Appeals had substantial pecuniary interests in The Union Properties, Inc., and its predecessors in title, on the aforesaid 17th day of March, 1938, when said Court of Appeals rendered said Judgment and decree in foreclosure and on aforesaid 10th day of 1939, when said Court of Appeals confirmed said Sheriff's sale to said The Union Properties, Inc.

Said Court of Appeals rendered Judgment against your Petitioner and dismissed his petition to vacate said sale and said confirmation of sale and dismissed his supplemental petition to vacate and set aside said decree of foreclosure and made an entry of said Judgment in the court journal on the 16th day of March, 1942. Said Judgment is embodied in the following words:

> "Prayer of petition and supplemental petition for vacation of judgment denied. Exceptions noted. Petitions are dismissed. Exceptions noted."—*Journal 14, 473.*

Thereafter on the 3rd day of April, 1942, your Peti-

tioner filed with said Court of Appeals and with the Supreme Court of Ohio a Notice of Appeal as of Right to the Supreme Court of Ohio, from said Judgment, in accordance with the rules and law of Ohio Appellate procedure, and subsequently filed a Motion to Certify.

On the 3rd day of June, 1942, the Supreme Court of Ohio rendered final Judgment in said cause and overruled said Motion to Certify and denied to your Petitioner the Appeal of Right and entered said Judgment on the 3rd day of June, 1942, in the following language:

> "Motion for an order directing the Court of Appeals to Certify its Record. It is ordered by the Court that this motion be, and the same hereby is overruled. Appeal of Right dismissed for the reason no debatable constitutional question is involved in said cause."—*Journal 14, page 604.*

Your Petitioner contended in his Briefs filed in said Court of Appeals, the Court of first instance, that, in the prior actions he had been deprived of property without due process of law contrary to Amendment XIV, Section 1 of the Constitution of the United States, and alleged the same in his pleadings filed in said Court of Appeals, and your Petitioner made the same contention before the Supreme Court of Ohio.

WHEREFORE your Petitioner respectfully prays that a Writ of Certiorari be issued by this Honorable Court to command the Supreme Court of Ohio to certify and to send to this Court for review and determination a transcript of the record in case numbered 29,145 on its Docket and a transcript of the record and proceedings in case numbered 16655 on the Docket of said Court of Appeals and that the Judgment of the Supreme Court of Ohio may be reversed by this Honorable Court, and that an Order may be issued directing the Supreme Court of Ohio to grant to your Petitioner a hearing on MERIT.